

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

July 1, 2015

This meeting was called to order at 6:00 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Russell Moore, Scott Spendlove, Sandy Naegle, and Necia Christensen

Those Absent:

William Whetstone

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Nichole Camac

WEST VALLEY CITY LEGAL DEPARTMENT

Brandon Hill, City Attorney

AUDIENCE:

Approximately one (1) person was in the audience.

VARIANCES

B-6-2015

DT Capital Development - Variance
2938 South Glen Eagle Drive
C-2 Zone

REQUEST:

Travis Cunningham, representing DT Capital Development, has filed a request with the West Valley City Board of Adjustment seeking two variances from the West Valley City Code. The first variance is from Section 7-6-1003(3)(b) which requires the rear and side yard setbacks for commercial buildings to be 10 feet from an existing or proposed residential use. The second variance is from Section 7-6-1008(1) which requires 15% landscaping of a commercial site. The applicant is requesting variances of 10 feet for the setback and 12% for landscaping respectively. The applicant has submitted this request to reduce the setback and landscaping requirements for a proposed storage unit development.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends commercial land uses.

- ☐ The subject property is known as lot 5A of the Colt Plaza III Subdivision Lot 5 Second Amended. This lot was created from the original lot 5 Colt Plaza III Subdivision and from two parcels that the applicant purchased. Mr. Cunningham has consolidated all of these properties to create a larger development site. The size of the property in question is 2.6 acres.
- ☐ The applicant approached the City with a question about doing storage units at this location. Staff evaluated the site and believes that this type of business would work well for the site as it has no frontage on 5600 West and limited visibility. The site is adjacent to the Deseret Industries location and adjacent to vacant ground on the north and west. Property to the east has been developed as a retail shopping center.
- ☐ As staff began to evaluate the site for a storage unit development, there were two ordinance items that the applicant would need to seek relief from in order to construct the project as submitted. Staff would like to evaluate each of these items independent of each other as it relates to the requested variances. These are as follows:
 - ☐ 1. Reduce the required setbacks from 10 feet to zero.

The requested variance is for the area along the north and west boundary of the project site. The property immediately to the north and west of Mr. Cunningham's property is zoned RM. This zone allows for higher density

residential uses. The setback requirement outlined in City Code is intended to provide a buffer between commercial and residential land uses. This 10-foot area is typically landscaped to help improve the buffer. However, given the proximity of the future Mountain View Corridor to the west and the general plan designation of commercial to the north, it is unlikely that residential housing will be constructed here.

The applicant also believes that reducing the setback along these areas will eliminate an area that will not be readily visible. These areas with limited visibility have proven problematic in similar developments. The applicant would like to eliminate this potential problem with the request to use the building itself as the exterior fence in these areas, thus reducing the setback from 10 feet to zero.

While the area between the proposed storage unit development and Mountain View Corridor Right-of-Way and the vacant land to the north, is zoned RM, staff anticipates that these areas will be rezoned at a later date to accommodate commercial uses. The General Plan designates both the north and west areas as general commercial.

☐ 2. Reduce the required 15% landscaping to 3%.

The overall site consists of 116,235 square feet or 2.7 acres. If the landscaping requirement were to be met, approximately 17,430 square feet would need to be landscaped. The applicant is proposing that 3,152 square feet be landscaped, or approximately 3%.

The request to reduce the landscaping is in consideration of the intended land use. Storage units by nature are not frequently accessed. The applicant believes that the limited use of this type of business does not warrant the site to be landscaped as you would have other commercial properties.

While discussing this request with the applicant, staff suggested the site could be evaluated in conjunction with all of what is part of the Colt Plaza III Subdivision. (The project for this application is an amended lot within said subdivision) The reasoning behind this approach is that lots to the east of the proposed storage units are located in an area where the general public drives and parks while visiting commercial uses within this subdivision. The landscaping for this area comprises approximately 13.6%. While it is clear that the landscaping is not located on the subject property wherein the variance request is being sought, it does provide the landscaping feel as you visit the property.

- ☐ Staff has provided a site plan of the proposed storage unit complex. In addition, a site plan for the overall site has been provided to give the Board members a sense of the landscaping that does exist within the subdivision. The applicant has also provided answers to the variance criteria.

- ☐ Should the Board of Adjustment find in favor of the variance requests, the applicant will need to work with staff regarding a conditional use permit.

ORDINANCE SUMMARY:

Section 7-6-1003(3)(b) requires the rear and side yard setbacks for commercial buildings to be 10 feet from an existing or proposed residential use. Section 7-6-1008(1) requires 15% landscaping of a commercial site.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Steve Lehman presented the application.

Discussion: Russell Moore asked if there are access agreements with neighbors. Steve replied that cross access and parking agreements were put into place when the subdivision was platted.

Applicant

Joe Cunningham

Joe Cunningham

Joe Cunningham stated he has developed much of the property in the area from Chik-Fil-A and Walmart on 5600 W 3100 S down to 5 Guys. He indicated that approval was granted for a multi-tenant retail building on the front lot but he decided to work with the two property owners to the west and eventually bought those as well. Mr. Cunningham stated that an amended and extended subdivision was approved that consolidated them and he is now ready to move forward with development. He indicated that the property is quite a distance from 5600 W and is behind several other businesses so it is in a difficult location. Mr. Cunningham stated that the front multi-tenant building will be used for a company that installs off-road equipment to vehicles and the rest of the property will be used for a storage unit. He stated that there will be a variety of styles and sizes of storage units but they won't be easily seen from 5600 W. He added that there is a large retaining wall, approximately 14 feet high, on the Deseret Industry property that would eliminate visibility from the south. Mr. Cunningham explained that there is a presence of homeless people in the area and he feels that security would be an issue if there was a small gap (the 10 foot setback to the rear property line as required by ordinance) between the storage units and the required masonry wall. He indicated that by allowing a zero setback, the wall of the storage unit would be safer and effective. Mr. Cunningham stated that landscaping will be concentrated on the front of the main multi-tenant building as well as a portion on the drive that leads to the property. He stated that once someone enters the secured gate (that leads to the storage units) there will be simple unloading and loading of storage supplies. He indicated that landscaping wouldn't be beneficial, especially for watering purposes, in this area. He indicated that the storage units are secured and must be accessed with a credit card so the general public will not be going in on a daily basis. Mr. Cunningham stated that medium density residential, like apartments or condos, doesn't feel conducive to the area. He indicated this will be a good use and will improve the area without negatively impacting anything around it. He stated that there are cross easements for everything, plenty of parking, and nice landscaping.

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Cunningham stated the purpose for the City's zoning ordinances are to promote health, safety and welfare of the community. The approval of the setback variance will promote safety and welfare as the reduction will eliminate areas that are not in public view. The landscaping ordinance is intended to beautify the property which in turn will enhance the health of the community. The proposed storage units are located behind other commercial property and will be fenced with an 8-foot wall will not be located in the public view except at the entrance. The site will be landscaped as you enter the property, but the area within the storage units will not be landscaped.

- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Cunningham stated that this property has no frontage on a dedicated street. It sits behind existing commercial development with limited access. It also sits to the north of a

commercial property where there is no setback requirement. The property to the north and west are planned for commercial uses which also do not have a setback requirement. Given the nature of the business, the property will be fenced so the reduction in landscaping will have no effect.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Mr. Cunningham stated that the substantial property right is that the storage unit project should be able to develop as other storage unit sites have been able to do. Because the property to the north and west is general planned for commercial, the reduction in setback would have no impact. The reduction in landscaping is reasonable as other storage units have limited or no landscaping internal to the project. In addition, people visiting this site won't really know where one property is from another. The area where there is nearly 14% landscaping is located at the entrance to this property.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Mr. Cunningham stated that granting the variance actually supports the general plan by reducing areas that may be a safety concern. The reduction of landscaping will help with water conservation. The proposed land use will not be contrary to the public interest because it will be far removed from any public street and from public view in general.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mr. Cunningham stated that the spirit of the zoning ordinance is observed because the variances requested are reasonable. The development of this property will be consistent with all other aspects of the C-2 zone.

Discussion: Sandy Naegle asked if the flag lot is something that the City wants to see in a commercial development. Mr. Cunningham replied that parking for the entire project is connected, landscaping is shared, and the entire Colt Plaza can be easily traversed. He stated that the flag is owned and indicated that this is where the easements are primarily located. Sandy Naegle asked how the storage units are accessed. Mr. Cunningham displayed the location of the secured gate.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval of a zero setback on the west and north sides of the property.

Ms. Naegle seconded the motion.

Discussion: Mr. Spendlove stated that he feels there is a safety concern with requiring the setback to the west and the setback reduction to the north makes sense. Russell Moore asked what the separation is from this property to the Mountain View Corridor. Steve replied that the Mountain View Corridor doesn't touch the property but it must be 20 feet away. He indicated that there will be a small piece of property leftover in UDOT's ownership which can be used for their purposes or sold to Mr. Cunningham for expansion of his property. Necia Christensen stated that she feels requiring the applicant to meet setback requirements could create a problem for homeless people trespassing.

A roll call was taken.

Mr. Moore	Yes
Ms. Naegle	Yes
Mr. Spendlove	Yes
Chairperson Christensen	Yes

Motion Carries - B-6-2015– Unanimous Vote

There being no further discussion regarding this application, Chairperson Christensen called for a second motion.

Mr. Spendlove moved for approval of the reduction in landscape.

Mr. Moore seconded the motion.

Discussion: Necia Christensen stated that she is concerned that there is a decrease in landscaping. She asked if landscaping along the drive aisle is calculated in the percentage. Steve replied yes and indicated that as you drive down the driveway, you see approximately 15% landscaping. Mr. Moore asked what the percentage of landscaping would be on the front portion of the property, excluding the storage units. Steve replied according to the original site plan approximately 15%. Chairperson Christensen asked if there will be a small section of landscaping in front of the parking stalls for the storage unit office. Steve replied yes. Mr. Spendlove stated that he feels the applicant meets all five of the criteria for this use as well. He indicated that it is in an unusual location, the size and nature of the property is unique, and reducing landscaping won't take away from ordinance requirements for beautification since landscaping will be focused on areas that are more visible to the public. He indicated that there is a significant amount of landscaping along 5600 W but this is behind two other developments and streets and is not something that is easily seen. Chairperson Christensen agreed and indicated that it won't affect the General Plan. Mr. Moore stated that firm reasoning was presented and he feels it will be a good addition to the area.

A roll call was taken.

Mr. Moore	Yes
-----------	-----

Ms. Naegle	Yes
Mr. Spendlove	Yes
Chairperson Christensen	Yes

Motion Carries - B-6-2015– Unanimous Vote

OTHER

The minutes from **May 7, 2014** were **approved**.

There being no further business the meeting adjourned at 6:41 p.m.

Nichole Camac, Administrative Assistant